



**WISCONSIN SUPREME COURT
THURSDAY, JANUARY 6, 2005
9:45 a.m.**

03-0442-CR State v. Charles Chvala

Justice David Prosser Jr. is not participating in this case.

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed an order of the Dane County Circuit Court, Judge Daniel R. Moeser presiding.

This case involves a state legislator who is accused of hiring and directing employees to operate political campaigns with state resources.

Here is the background: In 2002, Senate Majority Leader Chuck Chvala, D-Madison, an 18-year member of the state Senate, was charged with 19 felonies related to misconduct in public office, extortion, and campaign finance law violations. This fall, Chvala retired and Mark Miller, a Democrat and former member of the state Assembly, was elected to his seat.

Prosecutors allege that Chvala assigned staffers at the Senate Democratic Caucus – a publicly funded agency that was supposed to research policy issues for legislators – to work on political campaigns. The Court of Appeals opinion described the work:

[T]hese allegations show political campaign activity of the most basic type: the preparation and dissemination of campaign literature, political fundraising efforts on behalf of a number of candidates for the Wisconsin Senate, campaign data management on state computers, daily monitoring of the campaign progress by Chvala, development and implementation of campaign strategy and debriefing of the 2000 election cycle on state time in state offices. The result is public financing of private campaigns without the public's permission.

Chvala was one of several legislative leaders charged with crimes related to the misuse of public funds for political gain following an investigation into corruption in the Capitol. This case involves three of the felony-misconduct-in-office charges against Chvala. He asserts that the language in the statute is overly broad and unconstitutionally vague, and that a legislator trying to follow the law could be expected to be confused about the meaning of the term “duties” and whether there is a legal duty to refrain from hiring and directing employees to work on political campaigns:

Wis. Stat. § 946.12(3):

Any public officer ... who does any of the following is guilty of a Class I felony:

(3) Whether by act of commission or omission ... exercises a discretionary power in a manner inconsistent with the duties of the officer's office ... or the rights of others and with intent to obtain a dishonest advantage....

Chvala argues that the duties of office that are referenced in this statute are enumerated not in the statutes but in the Senate Rules. He argues that the Senate, as part of a separate and equal branch of government, has the exclusive power to regulate, police, and discipline its members, and that the courts have no authority to step into legislative affairs and launch a prosecution based upon an alleged violation of the Senate

Rules. The State, on the other hand, argues that Chvala is not accused of violating the Senate Rules, but rather of committing the crime of misconduct in public office.

The State's investigation into alleged Capitol misdeeds spawned a related case that the state Supreme Court heard in November 2003.¹ That case questioned whether the Dane County district attorney's subpoena for the back-up computer tapes containing all electronic documents produced on the Legislature's 1,060 computers (e-mail, post-it notes, memos, drafts, revisions, and other communications) as of Dec. 15, 2001 was valid. The Court unanimously concluded that the subpoena was overbroad, and quashed it. Last month, the Court rejected a motion for reconsideration of that opinion, but did issue a clarification of its June holding.

In this current case, the Supreme Court will decide whether the prosecution against Chvala will move forward.

¹ Custodian of Records for the Legislative Technology Services Bureau v. State of Wis. And Hon. Sarah B. O'Brien, 2004 WI 65